IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.376 OF 2003

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Union of India
Through Its Garrison Engineer ...Petitioner

v/s.

M/s.Associated Construction Co. ....Respondents

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Mr.A.C.Singh for the Petitioner.

Mr.Pesi Modi with Ms.Mugdha Shringarpure i/b Hariani & Co. for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 23RD MARCH,2005

P.C.:

1. By this petition filed under Section 1940 Act the Petitioner challenges the award made by the sole arbitrator. Perusal of the petition shows that the principal challenge to the award is that the learned arbitrator has not given reasons for recording the findings on the basis of which the award has been made and that several claims awarded against the Petitioner are contrary to the terms of the contract. It is submitted on behalf of the Petitioner that following clause 70 of the condition of contract imposes requirement of giving reasons on the arbitrator.

> "The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded separately on each individual item of

dispute."

2. It is contended that requirement of recording a finding implies the requirement of giving reasons. In my opinion, the submission is not well founded. A finding is a result of reason. What is to be recorded is a finding. There is no requirement of disclosing reasons. The distinction between the two terms, finding and reason, is well understood. The Supreme Court in its judgment in the case of Raipur Development Authority v/s. M/s. Chokhamal Contractors etc., AIR 1990 SC, 1426 has considered this aspect. The Supreme Court has held that the arbitrator is under no obligation to record reasons unless the arbitration agreement or the deed of submission or an order made by the Court under Sections 20, 21 or 34 of the Act requires the arbitrator to give reasons. The Supreme Court in paragraph 19 of the judgment has recorded thus:

> 19. It is now well-settled that an award can neither be remitted nor set aside merely on the ground that it does not

contain reasons in support of the conclusion or decision reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

3. Thus, it is a settled law that in order to oblige the arbitrator to give reasons, a duty has to be specifically imposed on him either by the contract between the parties or by the order of the Court. Clause 70 of the contract quoted above cannot be said to impose such an obligation on the arbitrator in the present case. Therefore, the arbitrator has not committed any error in not recording reasons for the findings and the award. The area of interference by the court in such a non-speaking award is also demarcated by the Supreme Court in its judgment in the case of Raipura Development Authority (supra). The Supreme Court in paragraph 17 of the judgment has observed thus:

> "The Court in dealing with an application to set aside an award has not to consider whether the view of the arbitrator on the evidence is justified. The arbitrator's adjudication is generally considered binding between the parties, for he is a tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in S.30. It

> is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. On the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning, the Court can not proceed to determine whether the conclusion is right or wrong. It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award."

4. Thus, a non-speaking award can be set aside by the Court only if the court finds that there is an error of law apparent on the face of the record, but the error of law must be apparent on the face of the record. The Supreme Court in its judgment referred to above (supra) has quoted following paragraph from the judgment of the Privy Council in the case of Champsey Bhara and Co. v/s. Jivraj Ballo Spinning and Weaving Co. Ltd. (AIR 1923 PC 66 at page 69):

> "An error in law on the face of the award means, in their Lordship's view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party, that opens the door to seeing first what that contention is, and then going to the contract on which the parties' right depend to see if that contention is sound."

5. Thus, a non-speaking award can be set aside by the Court if the legal proposition which is the basis of the award is found by the Court to be erroneous. In so far as the present case is concerned, perusal of the ground raised in the petition shows that though the Petitioner claims that certain items awarded by the learned arbitrator

were beyond his jurisdiction, what he is in fact contending is that the awarding of those items is contrary to certain terms in the contract. Perusal of clause (70) shows that that clause does not specifically say that the arbitrator shall make the award only in accordance with the terms of the contract. It is, therefore, obvious that the arbitrator will have to make an award in accordance with the law. Therefore, the arbitrator in a given case may be entitled to ignore the terms in the contract, if he finds that it is contrary to law. An error of such type can, therefore, be discovered only by process of reasoning and therefore, merely because by non-speaking award the arbitrator awards certain sum contrary to the terms in the contract, does not mean that the award in so far as awarding that sum is concerned, is beyond the jurisdiction of the arbitrator.

6. Taking overall view of the matter, therefore, as the parties have chosen not to impose an obligation on the sole arbitrator to give reason for the award, it will not be possible for the Court to speculate for what reasons the learned arbitrator has awarded certain sums or has not awarded certain sums.

7. In these circumstances, in my opinion, the award cannot be interfered with. Petition is, therefore, disposed of.

8. As I have been told by the parties that this was the only challenge to the award, and therefore, as the petition has failed, the award which is impugned in the petition is made rule of the Court. The Petitioner is directed to pay costs of this petition to the Respondent as incurred by the Respondent.

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